

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 44260/44261

STATE OF IDAHO, ) 2016 Unpublished Opinion No. 793  
 )  
Plaintiff-Respondent, ) Filed: November 29, 2016  
 )  
v. ) Stephen W. Kenyon, Clerk  
 )  
THERON PATRICK CHARLEY, ) THIS IS AN UNPUBLISHED  
 ) OPINION AND SHALL NOT  
Defendant-Appellant. ) BE CITED AS AUTHORITY  
 )  
\_\_\_\_\_ )

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael R. Crabtree, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before GUTIERREZ, Judge; GRATTON, Judge;  
and HUSKEY, Judge  
\_\_\_\_\_

PER CURIAM

In docket number 44260, Theron Patrick Charley was found guilty of domestic violence. Idaho Code § 18-918(2). In January 2008, the district court sentenced Charley to a unified term of ten years with five years determinate, suspended the sentence, and placed Charley on supervised probation for a period of three years. In July 2008, Charley violated his probation by absconding supervision. Approximately two years later, Charley was located and arrested. Charley admitted to violating his probation and the district court revoked his probation, ordered the underlying sentence executed, and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Charley's sentence and again placed him on supervised probation. In January 2012, Charley was arrested in Arizona and was charged with violating his

probation. In November 2014, Charley admitted to violating his probation and the district court reinstated him on supervised probation for a period of three years.

In September 2015, the State charged Charley with felony driving under the influence in docket number 44261, I.C. §§ 18-8004, 18-8005(6). Charley was charged with violation of his probation in docket number 44260. Charley subsequently admitted the allegations in docket number 44260 and pled guilty to felony driving under the influence in docket number 44261. In November 2015 the district court revoked Charley's probation and order the underlying sentence executed in docket number 44260 and imposed a concurrent unified sentence of ten years with three years determinate in docket number 44261.

On May 9, 2016, Charley filed Idaho Criminal Rule 35 motion for reduction of sentence in docket number 44260, and on May 11, 2016, he filed an I.C.R. 35 motion for reduction of sentence in docket number 44261. The district court denied both motions. Charley appeals asserting that the district court abused its discretion by denying his Rule 35 motions.

An I.C.R. 35 motion must be filed within 120 days of the entry of the judgment. I.C.R. 35(b). The 120-day filing limit is jurisdictional and deprives the district court of authority to entertain an untimely motion. *State v. Fox*, 122 Idaho 550, 552, 835 P.2d 1361, 1363 (Ct. App. 1992). Charley's Rule 35 motions were not timely filed. Therefore, the district court's orders denying Charley's Rule 35 motions are affirmed.